

**California Department of Transportation
Native American Advisory Committee
Quarterly Meeting Minutes
January 29, 2003**

Bo Mazzetti, Vice-Chairperson, called the meeting to order at 9:05 a.m.

Roll Call: Betty Miller, NA Liaison, called Roll. Committee members in attendance were Barbara Burke, Samuel Elizondo, Nicholas Fonseca, Joseph Garcia, Sr., Michael Holman, Vlayn McCovey, Martin D. Martinez III, Andrew Masiel, Bo Mazzetti, Joseph A. Myers, Dave Nenna, Patricia Ockert, Irenia Quitiquit, Kevin Siva and Kathy Wallace. Alternate member in attendance was Benjamin Charley for Lorenda Sanchez. Joan Sollenberger, Chief, Division of Transportation Planning, was in attendance as the Director's representative. The Committee granted Joe Sanchez's request for an excused absence due to the death of Mr. Vernon Johnson. Vote was 12 For, 0 Against, 0 Abstain.

Election of Chairperson: Joseph A. Myers was elected to serve as the Committee Chairperson during his term of January 1, 2003 through December 31, 2004. Motion by Bo Mazzetti; Second by Nicholas Fonseca. Vote was 12 For, 0 Against, 0 Abstain.

Adopt Agenda: Motion by Andrew Masiel; Second by Joseph Myers to adopt the Agenda. Vote was 12 For, 0 Against, 0 Abstain.

Approve Minutes: Minutes of the October 23, 2002 meeting were approved. Motion by Andrew Masiel; Second by Kevin Siva. Vote was 14 For, 0 Against, 0 Abstain.

OLD BUSINESS:

1. **Contracting with Tribes.** Joan Sollenberger introduced Brelend C. Gowan, Deputy Chief Counsel for the Legal Division. Mr. Gowan stated that the Department would like to see the status of Tribes on a par with other governments as pertains to contracting, but that the Department needs clear statutory authority to contract with Tribes, which in the Legal Division's opinion, it does not have. Gaming compacts do not provide the contract authority. There is some limited contract authority in some areas, such as monitoring agreements. The California Streets and Highway Code, Section 114, allows the Department to enter into cooperative agreements, but the Legal opinion is that Tribes are not covered under Section 114.

Mario Orso, NA Liaison, District 11, asked what the Department should do in those circumstances where development is proceeding and a Tribe is willing to contribute a fair share toward mitigating an impact? Mr. Cowan replied that currently that presents a difficulty, but the Department is working on it.

Joseph Myers suggested that if legislation is required to fix this problem, then perhaps there was a need to change the Department attitude, as well.

A question was asked about the Department's ability to contract with Tribes for archaeological or cultural resource services. Mr. Gowan stated that contracting with a Tribe for these services is permissible.

Vlayn McCovey requested that Mr. Gowan provide the Committee with documentation of the Legal Division's position as he presented it. Chairperson Myers reiterated the request and asked for a response within two (2) weeks.

2. Legislative Subcommittee Report. Andrew Masiel, Subcommittee Chairperson, reported that the California State Assembly is forming a Select Committee on California Indian Nations, which will be a vehicle to address Tribal issues. Assemblyman Ed Chavez, 57th District, will chair the Committee.

Mr. Masiel indicated that heretofore he has limited his Subcommittee legislative reviews to those measures that directly affect transportation and Tribes, but asked if his reviews should be expanded to include other proposed legislation. Chairperson Myers suggested that it would be beneficial to review as many pieces of legislation as possible that impacts transportation, and vice versa.

Cynthia Gonzales announced that the Governor's Office of Planning and Research is looking for a Tribal member to serve on an Environmental Justice committee.

3. Highway Landscaping Subcommittee. Kathy Wallace, Subcommittee Chairperson, reviewed the topics of work/discussion during the January 28, 2003 meeting. Main topic of discussion continued with the Subcommittee's efforts to help the Department's Maintenance staff protect gathering sites. Within this effort, the Subcommittee is working toward developing educational materials, encouraging Native American Coordinators and Archaeologists to work with gatherers to identify sites and then with local Maintenance staff to protect those sites, ensuring that the sites are entered in the Districts' Environmentally Sensitive Area (ESA) database; and, ensuring that the Landscape Architect enters those site into the Department's Vegetation Control Plan (Vegcon).

Gathering permits are an issue, also. The Subcommittee is working to make the permit process easier for gatherers, as well as protect/prohibit the gathering of endangered species. The Subcommittee will invite an HQ Permits representative to its next meeting. In addition to addressing the permit process, the Subcommittee will work with a Landscape Architect to decide how to fit useful native plants into project plans during the project development process at the next meeting. Regional plant lists need to be developed with the help of local gatherers.

In response to a query from Joseph Myers, Ms. Wallace indicated that the Subcommittee had no funding for producing materials to be used in its educational campaign. It was suggested that perhaps some of the Tribal governments within the State would assist. Irenia Quitiquit announced that she is putting together a native plant wheel and will be glad to share the information when it is complete. Kevin Siva indicated that the Malki Museum has a book written by Katherine Saubel that includes a plant list and their uses.

4. Driver Safety/Rural Issues Report. Cynthia Gomez distributed copies of a draft concept paper (OTS-136 {Office of Traffic Safety}) that was generated by Craig Copelan, Chief, Traffic Safety Research Branch, in response to the safety issues that the Yurok Tribe brought to the Committee in 2002. The paper proposes statewide funding for small grants for traffic safety educational projects within reservations in California by 2004.

Joseph Myers indicated that there are no Tribal statistics that reflect safety issues such as impaired driving/walking, seatbelt and child safety seat use, and that we are not getting the message to the young ones about the dangers of alcohol and other unsafe driving conditions. Necessary to gather specific information in order to begin to solve the driving safety issues on California reservations.

Cynthia Gomez queried the Committee as to the feasibility of the National Indian Justice Center (NIJC) serving as the administrator for grant funds in order to maximize their benefit. Motion by Bo Mazzetti; Second by Vlayn McCovey. Vote was 16 For, 0 Against, 0 Abstain, to recommend that NIJC administer any grant funds received.

Joan Sollenberger indicated that she continues to discuss funding alternatives to try to solve the problem. Traffic Operations is considering new way to use funding for ways to change driver behavior, which causes 93% of accidents.

Redwood Valley Reservation enacted a nuisance ordinance, which includes a fine for reckless driving. It has been effective in reducing accidents. Martin D. Martinez III suggested that perhaps the Department could provide training films and that the subject of driver education should be added to the Tribal Government Transportation Planning Academy agendas. Vlayn McCovey expressed the opinion that more culturally sensitive materials should be produced.

5. Indian Reservation Roads (IRR) Program. Vlayn McCovey reported that the IRR Rulemaking Committee had received comments from seventeen California Tribes and the California Indian Manpower Consortium, Inc. (CIMC) by the deadline of November 7, 2002. Unfortunate that more Tribes did not comment. There is some concern that the electronic submissions were not received in Washington, DC. Cynthia Gomez noted that Director Jeff Morales had submitted a Department letter in support of California Tribes, as did the Lake County/City Area Planning Council, Butte County Association of Governments and the County of San Diego.

Ms. McCovey announced that the Rulemaking Committee will meet twice in February (3-7 and 24-28) to review comments to the proposed rule, and she anticipates two meetings in March, as well. She distributed a list of Tribal comments and a list of comments by other States.

6. Reauthorization Act. Cynthia Gomez distributed copies of the National Congress of American Indians (NCAI) draft, dated January 10, 2003. Vlayn McCovey convinced the NCAI to agree to a base amount of \$35, 000 in planning funds per Tribe as part of the upcoming reauthorization legislation regardless if new funding is available.

7. Environmental Subcommittee Report. Cynthia Gomez reported that the Subcommittee met on December 4, 2002. The selection of cultural resource monitors is a high priority of Tribal leaders. Tina Biorn, Native American Liaison, Cultural and Community Studies Office, is continuing to work with the Subcommittee. She announced that the next meeting is scheduled for March 4, 2003.

8. Statewide Conference/2003. Cynthia Gomez reported that all parties are awaiting approval from the Business, Transportation and Housing (BT&H) Agency before proceeding with plans for the conference.

9. **2003 Committee Meetings Schedule.** The Committee confirmed the dates of April 29, July 29, and November 5, 2003 for its meetings for the remainder of the year. Location is the Woodland Training Center from 9:00 a.m. – 3:00 p.m.

10. **State Budget (not on Agenda).** Joan Sollenberger briefly reviewed the budget situation. Funding that previously had been directed to Traffic Congestion Relief Program may now be returned to the General Fund. A number of factors preclude firm statements regarding the State Highway Account and funding for the community empowerment grants (Environmental Justice, Community Planning). The Department has no plan to lay off employees at this time.

Michael Holman asked if the Department was trying to access monies from the Special Distribution Fund established by gaming Tribes to address impacts from the gaming facilities as part of the State/Tribal Gaming Compacts? Tribes and local governments throughout the State are asking why the fund monies have not all been released.

NEW BUSINESS:

1. **Title VI Complaint Filing Process.** Sherry Johnstone, Title VI Coordinator, Civil Rights Office, provided an overview of the requirements of Title VI of the Civil Rights Act of 1964. She distributed materials that summarized the program and described the discrimination complaint process.

In response to a query from Aaron Holstine, Ms. Johnstone indicated that the Title VI program applies to any entity that receives Federal funding. Michael Holman expressed the opinion that Tribes probably have more trouble with local transportation planning agencies than with the State and asked what could be done about that. Ms. Johnstone replied that the State is responsible for oversight of the local agencies. She suggested that if the certification process doesn't work that a discrimination complaint could be filed.

2. **Tribal Technical Assistance Program (TTAP).** David Beaver, Executive Vice President, National Center for American Indian Enterprise Development (NCAIEC) addressed the meeting, describing the purpose of NCAIEC and indicating that it had been awarded the TTAP contract about a year ago for California and Nevada. NCAIEC wants to facilitate getting corporate American in Tribal economic and infrastructure development. In response to a number of inquiries as to the benefit to Tribal governments in California, Mr. Beaver indicated that his organization could facilitate training and promote partnerships with regional agencies. He stated that NCAIEC does not want to duplicate existing efforts being made to provide technical assistance to Tribes.

Joseph Myers requested that specific descriptions of what NCAIEC intends to do and a work plan be developed.

3. **California Transportation Plan (CTP).** Nathan Smith, Chief, Office of State Planning, distributed copies of the recently published brochure, "Connecting Californians," summarizing the CTP. He explained that the CTP is a long-range policy plan, and explained his Office's efforts to satisfy public participation requirements. Future efforts include conducting workshops throughout the State and Districts going into communities to obtain more information regarding transportation issues. Comments received during the next month

(cutoff date is March 7) will be included in a newsletter, as well as being posted on the Office web page.

Cynthia Gomez commented that the Office had sent the draft CTP to all of the Tribal governments in California. Mr. Smith indicated that an advisory committee would be formed to consider comments to the CTP, and Joseph Myers asked him to contact Cynthia Gomez in order to arrange for volunteers to serve on the advisory committee.

4. National Historic Preservation Act, Section 106 Programmatic Agreement. Joan Bollman, Sr. Environmental Specialist, Federal Highway Administration (FHWA) addressed the Committee about proposed streamlining procedures that would delegate to the Department consultation with the SHPO for the first two steps of the "106 consultation" process. The two steps are identification and evaluation of historic resources that may be affected by a project, and the assessment of whether the project will have an effect on an historic property determined to be listed in or eligible for inclusion in the National Register of Historic Places. If the proposal were accepted, the Department would directly notify the State Historic Preservation Office (SHPO) concurrently with its notification to FHWA.

Ralph DeGarmo, Fort Bidwell Reservation stated that Native Americans are concerned about the destruction of their ancestral lands. Ms. Bollman assured the group that Tribal consultation in accordance with the regulations for implementing Section 106 would not be changed. The proposed draft procedure will be sent to all recognized Tribal governments; un-recognized Tribal governments and Indian organizations in the State for review. FHWA, ACHP, SHPO, and Caltrans will consider comments received within the 45-day review period before finalizing the Programmatic Agreement.

ANNOUNCEMENTS/OPEN FORUM:

1. Joseph A. Myers, Executive Director, National Indian Justice Center, received the "California Peace Prize 2002" from the California Wellness Foundation on December 6, 2002. The California Peace Prize honors individuals whose outstanding efforts have helped prevent violent deaths and injuries in communities across California. Mr. Myers is one of three individuals so honored in 2002.

2. The FHWA Federal Lands Highway Program published a Notice of Proposed Rulemaking in the Federal Register January 8, 2003 (FHWA Docket No. FHWA-99-4968), Vol. 68, No. 5: 23 CFR Part 973, "Federal Lands Highway Program; Management Systems Pertaining to the Bureau of Indian Affairs and the Indian Reservation Roads Program." This rulemaking proposes to provide for the development and implementation of pavement, bridge, safety, and congestion managements systems for transportation facilities providing access to Indian lands and funded under the FLHP. **Comments must be received on or before March 10, 2003.** The Department is currently drafting comments.

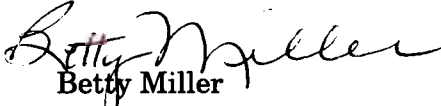
3. The Bureau of Indian Affairs published a Final Rule in the Federal Register January 8, 2003, Vol. 68, No. 5: 25 CFR Part 170, "Partial Distribution of Fiscal Year 2003 Indian Reservation Roads Funds." The rules requires distribution of \$25 million of fiscal year 2003 Indian Reservation Roads (IRR) funds to projects on or near Indian reservations using the relative need formula. Effective date: January 13, 2003 through September 30, 2003.

4. The Cal/Act 2003 Spring Conference is scheduled for, April 22-25, 2003 at the Riverside Convention Center. Lodging available at the Mission Inn, (800) 843-7755 or the Riverside Marriott, (909) 784-8000.

5. Cynthia Gomez announced that the University of California Riverside offers monitoring training.

ADJOURNMENT:

Motion by Bo Mazzetti to adjourn the meeting; Second by Joseph Garcia. Vote was 10 For, 0 Against, 0 Abstain. The meeting was adjourned at approximately 3:00 p.m.

Submitted by: 
Betty Miller
Native American Liaison Branch

Attendance in addition to Committee members and Director's representative:

Sharon Scherzinger, California Department of Transportation
Alex Morales, California Department of Transportation
Cynthia Gomez, California Department of Transportation
Jo Sanford, California Department of Transportation
Aaron L. T-Holstine, Robinson Rancheria
Tina Biorn, California Department of Transportation
Stephen Waltz, Potter Valley Tribe
Kathleen Zahnizer, California Department of Transportation
Gene Preston, Pit River Tribe
Marta Frausto, California Department of Transportation
Kathleen Sartorius, California Department of Transportation
Mario Orso, California Department of Transportation
Cassandra Hensher, California Indian Basketweavers Association
Brian Travis, California Department of Transportation
Brelend C. Gowan, California Department of Transportation
Alex Flores, North Fork Rancheria
Newell Mann, FIGR
Ralph DeGarmo, Fort Bidwell Reservation
Angel Carrera, California Department of Transportation
Lil Hoaglen, Sherwood Valley Rancheria
Sherry Johnstone, California Department of Transportation
Sarah M. Allred, California Department of Transportation
Jesse Burnet, Coyote Valley Reservation
David Beaver, NCAIED
Crystal Maples, Guidiville Rancheria
Lisa Rathburn, Guidiville Rancheria
Rob Hartman, Karuk Tribe of California
Wade Hobbs, Federal Highway Administration
Joan Bollman, Federal Highway Administration